

In re: DAVID TRACY BRADSHAW.
HPA Docket No. 99-0008.
Order Denying Petition for Reconsideration filed August 3, 2000.

Petition for reconsideration.

The Judicial Officer denied Respondent's Petition for Reconsideration. The Judicial Officer stated that petitions for reconsideration filed pursuant to 7 C.F.R. § 1.146(a)(3) relate to reconsideration of the Judicial Officer's decision only—not to reconsideration of an administrative law judge's initial decision. Therefore, the Judicial Officer treated Respondent's contentions that the Chief Administrative Law Judge and the Judicial Officer erred as contentions that the Judicial Officer erred in the Judicial Officer's June 14, 2000, Decision and Order. The Judicial Officer found that the six issues raised by Respondent in his Petition for Reconsideration had been raised in Respondent's appeal petition and addressed in *In re David Tracy Bradshaw*, 59 Agric. Dec. ____ (June 14, 2000). The Judicial Officer stated that he carefully reviewed the June 14, 2000, Decision and Order and found no error.

Colleen A. Carroll, for Complainant.
Respondent, Pro se.
Initial decision issued by James W. Hunt, Chief Administrative Law Judge.
Order issued by William G. Jenson, Judicial Officer.

The Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter Complainant], instituted this disciplinary administrative proceeding under the Horse Protection Act of 1970, as amended (15 U.S.C. §§ 1821-1831) [hereinafter the Horse Protection Act], and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes [hereinafter the Rules of Practice] by filing a Complaint on March 4, 1999.

The Complaint alleges that on August 28, 1998, David Tracy Bradshaw [hereinafter Respondent] allowed the entry of a horse called "Favorite's Fargo" as entry number 2016 in class number 25 at the 60th Annual Tennessee Walking Horse National Celebration in Shelbyville, Tennessee, for the purpose of showing or exhibiting Favorite's Fargo, while Favorite's Fargo was sore, in violation of section 5(2)(D) of the Horse Protection Act (15 U.S.C. § 1824(2)(D)) (Compl. ¶¶ 2-3).

On April 1, 1999, Respondent filed an Answer denying the allegations in the Complaint. On December 8, 1999, Chief Administrative Law Judge James W. Hunt [hereinafter the Chief ALJ] conducted a hearing in Fort Worth, Texas. Colleen A. Carroll, Office of the General Counsel, United States Department of Agriculture, represented Complainant. Kenneth A. Wright of the Law Offices of Rogers & Wright, Dallas, Texas, represented Respondent.

On February 16, 2000, Complainant filed Complainant's Proposed Findings of Fact and Conclusions of Law and Memorandum of Points and Authorities in Support Thereof, and Respondent filed Respondent's Brief in Support of Motion for Dismissal.

On April 6, 2000, the Chief ALJ issued a Decision and Order [hereinafter Initial Decision and Order] in which the Chief ALJ: (1) concluded that Respondent

violated section 5(2)(D) of the Horse Protection Act (15 U.S.C. § 1824(2)(D)) by entering or allowing the entry of Favorite's Fargo in the 60th Annual Tennessee Walking Horse National Celebration in Shelbyville, Tennessee, on August 28, 1998, while Favorite's Fargo was sore, for the purpose of showing or exhibiting Favorite's Fargo; (2) assessed Respondent a \$2,000 civil penalty; and (3) disqualified Respondent for 1 year from showing, exhibiting, or entering any horse, directly or indirectly through any agent, employee, or other device, and from judging, managing, or otherwise participating in any horse show, horse exhibition, horse sale, or horse auction (Initial Decision and Order at 9).

On May 5, 2000, Respondent appealed pro se to the Judicial Officer; on May 22, 2000, Complainant filed Complainant's Response to Respondent's Appeal Petition; and on May 23, 2000, the Hearing Clerk transmitted the record of the proceeding to the Judicial Officer for a decision.

On June 14, 2000, I issued a Decision and Order: (1) concluding that Respondent violated section 5(2)(D) of the Horse Protection Act (15 U.S.C. § 1824(2)(D)) by allowing the entry of Favorite's Fargo in the 60th Annual Tennessee Walking Horse National Celebration in Shelbyville, Tennessee, on August 28, 1998, while Favorite's Fargo was sore, for the purpose of showing or exhibiting Favorite's Fargo; (2) assessing Respondent a \$2,000 civil penalty; and (3) disqualifying Respondent for 1 year from showing, exhibiting, or entering any horse, directly or indirectly through any agent, employee, or other device, and from judging, managing, or otherwise participating in any horse show, horse exhibition, horse sale, or horse auction. *In re David Tracy Bradshaw*, 59 Agric. Dec. ___, slip op. at 15, 40-41 (June 14, 2000).

On June 28, 2000, Respondent filed a Petition for Reconsideration of the June 14, 2000, Decision and Order; on July 19, 2000, Complainant filed Complainant's Response to Respondent's Petition for Reconsideration; and on July 20, 2000, the Hearing Clerk transmitted the record of the proceeding to the Judicial Officer for reconsideration of the June 14, 2000, Decision and Order.

Respondent raises six issues in Respondent's Petition for Reconsideration. Respondent contends, with respect to five of these issues, that both the Chief ALJ and the Judicial Officer erred. At this stage of the proceeding, error by the Chief ALJ is irrelevant. Section 1.142(c)(4) of the Rules of Practice provides, as follows:

§ 1.142 Post-hearing procedure.

. . . .

(c) *Judge's decision.* . . .

. . . .

(4) The Judge's decision shall become effective without further proceedings 35 days after the issuance of the decision, if announced orally at the hearing, or if the decision is in writing, 35 days after the date of

service thereof upon the respondent, unless there is an appeal to the Judicial Officer by a party to the proceeding pursuant to § 1.145; *Provided, however*, that no decision shall be final for purposes of judicial review except a final decision of the Judicial Officer upon appeal.

7 C.F.R. § 1.142(c)(4).

On May 5, 2000, Respondent filed a timely appeal to the Judicial Officer pursuant to 7 C.F.R. § 1.145. Consequently, while the Chief ALJ's Initial Decision and Order is part of the record,¹ the Initial Decision and Order never became effective and no purpose relevant to this proceeding would be served by reconsidering the Initial Decision and Order.

Further, section 1.146(a)(3) of the Rules of Practice provides that a party to a proceeding may seek reconsideration of the decision of the Judicial Officer, as follows:

§ 1.146 Petitions for reopening hearing; for rehearing or reargument of proceeding; or for reconsideration of the decision of the Judicial Officer.

(a) *Petition requisite.* . . .

. . . .

(3) *Petition to rehear or reargue proceeding, or to reconsider the decision of the Judicial Officer.* A petition to rehear or reargue the proceeding or to reconsider the decision of the Judicial Officer shall be filed within 10 days after the date of service of such decision upon the party filing the petition. Every petition must state specifically the matters claimed to have been erroneously decided and alleged errors must be briefly stated.

7 C.F.R. § 1.146(a)(3).

Thus, petitions for reconsideration filed pursuant to section 1.146(a)(3) of the Rules of Practice (7 C.F.R. § 1.146(a)(3)) after the Judicial Officer's decision has been issued relate to reconsideration of the Judicial Officer's decision only.²

¹See 5 U.S.C. § 557(c).

²See *In re JSG Trading Corp.*, 57 Agric. Dec. 710, 720 (1998) (Order Denying Pet. for Recons. as to JSG Trading Corp.) (stating petitions for reconsideration filed pursuant to 7 C.F.R. § 1.146(a)(3) after the Judicial Officer's decision has been issued relate to reconsideration of the Judicial Officer's decision only); *In re Peter A. Lang*, 57 Agric. Dec. 91, 101 (1998) (Order Denying Pet. for Recons.) (stating petitions for reconsideration filed pursuant to 7 C.F.R. § 1.146(a)(3) relate to reconsideration of the Judicial Officer's decision only); *In re Field Market Produce, Inc.*, 55 Agric. Dec. 1418, 1435 (1996) (stating "[p]etitions for reconsideration under the Rules of Practice relate to reconsideration of the

Therefore, I treat Respondent's contentions that the Chief ALJ and the Judicial Officer erred as contentions that the Judicial Officer erred in the June 14, 2000, Decision and Order.

Respondent raises six issues in his Petition for Reconsideration.³ Respondent raised, *inter alia*, these same six issues in his Appeal Petition filed May 5, 2000. I addressed each of these issues in *In re David Tracy Bradshaw*, 59 Agric. Dec. ____ (June 14, 2000). I have carefully reviewed the June 14, 2000, Decision and Order and find no error.

For the foregoing reason and the reasons set forth in *In re David Tracy Bradshaw*, 59 Agric. Dec. ____ (June 14, 2000), Respondent's Petition for Reconsideration is denied.

Section 1.146(b) of the Rules of Practice (7 C.F.R. § 1.146(b)) provides that the decision of the Judicial Officer shall automatically be stayed pending the determination to grant or deny a timely-filed petition for reconsideration.⁴

Judicial Officer's decision"); *In re Lincoln Meat Co.*, 48 Agric. Dec. 937, 938 (1989) (stating "[t]he Rules of Practice do not provide for a Motion for Reconsideration to the Administrative Law Judge").

³Respondent contends: (1) *Young v. United States Dep't of Agric.*, 53 F.3d 728 (5th Cir. 1995) is applicable precedent; (2) digital palpation is an unreliable method by which to determine that a horse is sore; (3) the findings of fact are based upon unreliable hearsay documentation prepared in anticipation of litigation; (4) Dr. Price's affidavit (CX 8) and Dr. Taylor's affidavit (CX 7) are inadmissible hearsay; (5) he was deprived of the right to confront witnesses against him; and (6) the inference that if John Feltner, Jr., had testified, his testimony would not have favored Respondent is error (Respondent's Pet. for Recons. ¶¶ 1-5).

⁴*In re Kirby Produce Company, Inc.*, 58 Agric. Dec. ____, slip op. at 11 (Oct. 4, 1999) (Order Denying Pet. for Recons.); *In re James E. Stephens*, 58 Agric. Dec. 201, 209 (1999) (Order Denying Pet. for Recons.); *In re Michael Norinsberg*, 58 Agric. Dec. 619, 625 (1999) (Order Denying Pet. for Recons. on Remand); *In re Sweck's, Inc.*, 58 Agric. Dec. 222, 227 (1999) (Order Denying Pet. for Recons.); *In re Produce Distributors, Inc.*, 58 Agric. Dec. 535, 540-41 (1999) (Order Denying Pet. for Recons. as to Irene T. Russo, d/b/a Jay Brokers); *In re Judie Hansen*, 58 Agric. Dec. 369, 387 (1999) (Order Denying Pet. for Recons.); *In re Daniel E. Murray*, 58 Agric. Dec. 77, 83 (1999) (Order Denying Pet. for Recons.); *In re David M. Zimmerman*, 58 Agric. Dec. 336, 338-39 (1999) (Order Denying Pet. for Recons.); *In re C.C. Baird*, 57 Agric. Dec. 1284, 1299 (1998) (Order Denying in Part and Granting in Part Pet. for Recons.); *In re JSG Trading Corp.*, 57 Agric. Dec. 710, 729 (1998) (Order Denying Pet. for Recons. as to JSG Trading Corp.); *In re Peter A. Lang*, 57 Agric. Dec. 91, 110 (1998) (Order Denying Pet. for Recons.); *In re Jerry Goetz*, 57 Agric. Dec. 426, 444 (1998) (Order Denying Respondent's Pet. for Recons. and Denying in Part and Granting in Part Complainant's Pet. for Recons.); *In re Alfred's Produce*, 57 Agric. Dec. 799, 801-02 (1998) (Order Denying Pet. for Recons.); *In re Michael Norinsberg*, 57 Agric. Dec. 791, 797 (1998) (Order Denying Pet. for Recons.); *In re Tolar Farms*, 57 Agric. Dec. 775, 789 (1998) (Order Denying Pet. for Recons.); *In re Samuel Zimmerman*, 56 Agric. Dec. 1458, 1467 (1997) (Order Denying Pet. for Recons.); *In re Kanowitz Fruit*

Respondent's Petition for Reconsideration was timely filed and automatically stayed the June 14, 2000, Decision and Order. Therefore, since Respondent's Petition for Reconsideration is denied, I hereby lift the automatic stay, and the Order in the Decision and Order filed June 14, 2000, is reinstated, with allowance for time passed.

For the foregoing reasons, the following Order should be issued.

Order

1. Respondent is assessed a \$2,000 civil penalty. The civil penalty shall be paid by certified check or money order, made payable to the "Treasurer of the United States" and sent to:

Colleen A. Carroll
United States Department of Agriculture
Office of the General Counsel
Marketing Division
1400 Independence Avenue, SW
Room 2343-South Building
Washington, DC 20250-1417

Respondent's payment of the civil penalty shall be forwarded to, and received by, Ms. Carroll within 60 days after service of this Order on Respondent. Respondent shall indicate on the certified check or money order that payment is in reference to HPA Docket No. 99-0008.

2. Respondent is disqualified for 1 year from showing, exhibiting, or entering any horse, directly or indirectly through any agent, employee, or other device, and from judging, managing, or otherwise participating in any horse show, horse exhibition, horse sale, or horse auction. "Participating" means engaging in any activity beyond that of a spectator, and includes, without limitation: (a) transporting or arranging for the transportation of a horse to or from any horse show, horse exhibition, horse sale, or horse auction; (b) personally giving instructions to exhibitors; (c) being present in the warm-up or inspection areas, or in any area where spectators are not allowed; and (d) financing the participation of any other

& Produce, Co., 56 Agric. Dec. 942, 957 (1997) (Order Denying Pet. for Recons.); *In re Volpe Vito, Inc.*, 56 Agric. Dec. 269, 275 (1997) (Order Denying Pet. for Recons.); *In re City of Orange*, 56 Agric. Dec. 370, 371 (1997) (Order Granting Request to Withdraw Pet. for Recons.); *In re Five Star Food Distributors, Inc.*, 56 Agric. Dec. 898, 901 (1997) (Order Denying Pet. for Recons.); *In re Havana Potatoes of New York Corp.*, 56 Agric. Dec. 1017, 1028 (1997) (Order Denying Pet. for Recons.); *In re Saulsbury Enterprises*, 56 Agric. Dec. 82, 101 (1997) (Order Denying Pet. for Recons.); *In re Andershock Fruitland, Inc.*, 55 Agric. Dec. 1234 (1996) (Order Denying Pet. for Recons.).

person in any horse show, horse exhibition, horse sale, or horse auction.

The disqualification of Respondent shall become effective on the 60th day after service of this Order on Respondent.
